

COMMONWEALTH of VIRGINIA

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

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October 2, 1995

Mr. Edward J. Jankiewicz, Director
Department of Environmental Management
County of Fairfax
12055 Government Center Parkway
Fairfax, Virginia 22035-5503

Re: Classification of Ponds, Lakes and Stormwater Management Facilities
Connected to Perennial Streams

Dear Mr. Jankiewicz:

Mrs. Kathleen Lawrence, the CBLAD Executive Director, asked me to respond to your request for assistance in determining the RPA boundary for a specific site subject to Fairfax County's Chesapeake Bay Preservation Ordinance. At issue is whether the pond you described in your letter should be classified as a Resource Protection Area (RPA) feature and, thus, be required to have a 100-foot wide vegetated buffer area around it.

This question has been asked by several other Tidewater local governments in the past - most notably regarding a lake and some golf course ponds in Spotsylvania County and a reservoir in the City of Newport News. The Department has been consistent in its interpretation of this type of situation. If a body of water such as a lake, pond or reservoir that has an intermittent source flows perennially into a receiving stream, then the Department has recommended that the body of water should be considered part of the tributary stream (perennial flow) **system**, and thus be designated as an RPA feature. In this case, the USGS map shows the lake with a solid blue border, which would indicate perennality. Furthermore, one might be able to argue that the land covered with the lake is a nontidal wetland contiguous to a tributary stream, which would also warrant its designation as an RPA feature, consistent with the State Chesapeake Bay Preservation Act (CBPA) Regulations and the Fairfax County ordinance derived from them. Therefore, based on the USGS map depiction and other information provided, the Department would consider designation of the lake as an RPA feature by Fairfax County to be consistent with the Regulations and previous interpretations of this issue,



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Section 4. 1. B of the CBPA Re(gulations states that "Local Governments may exercise judgement in determining site-specific boundaries of Chesapeake Bay Preservation Area components and in makin,,, determinations of the application of these regulations, based on more reliable or specific information - athered from actual field evaluations of the parcel For example, the County could find, from its own investigation or from information submitted by the applicant, that flow from the lake to the stream was, in fact, *itot* perennial under normal rainfall conditions, but was actually interrupted at certain times of the year. In that case, the County could exercise its judgement to find that the flow is intermittent and, thus, that the lake is *liot* an FPA feature. Furthermore, if circumstances warrant and the applicant so requests, the County has the authority to arant an exception to this designation requirement, consistent with the exception provisions of the local ordinance.

I hope this interpretation is helpful. If you hav'e any que stions, please feel free to call me.

Sincerely,

C. Scott Crafton
Chief Engineer

c: Kathleen Lawrence
Scott Kudlas

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